

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal)	SPB Case No. 31639
)	
CHRISTINE M. CORRAL)	BOARD DECISION
)	(Precedential)
From dismissal from the position)	
of Workers' Compensation Insurance)	NO. 94-02
Technician Range A with the State)	
Compensation Insurance at Monterey)	January 6, 1994
Park)	

Appearances: Edmund A. Hernandez, Labor Relations Representative, California State Employees Association, representing appellant, Christine M. Corral; Donald N. Fratus, Attorney, representing respondent, State Compensation Insurance Fund.

Before Carpenter, President; Stoner, Vice President; Ward and Villalobos, Members.

DECISION

This case is before the State Personnel Board (SPB or Board) for determination after the Board rejected the Proposed Decision of the Administrative Law Judge (ALJ) in the appeal of Christine M. Corral (appellant) from her position as a Workers' Compensation Insurance Technician, Range A (WCIT), with the State Compensation Insurance Fund (SCIF or Respondent). The ALJ found appellant violated Government Code section 19572, subdivisions (m) discourteous treatment of the public or other employees and (t) other failure of good behavior, after concluding that appellant made implied threats to two California Highway Patrol (CHP) Officers after they arrested her for driving under the influence of alcohol. The ALJ found that the appellant told the officers she had the ability to alter CHP workers' compensation claims and implied that she might tamper with claims they might have in the

(Corral continued - Page 2)

future. Although the ALJ found appellant to have made such threats, she modified appellant's dismissal to an official reprimand after concluding that the appellant did not have the capability of carrying through with her threats and was simply "mouthing off" at the officers.

After a review of the entire record, including the transcript, exhibits, and the written and oral arguments of the parties, the Board agrees with the ALJ's findings that appellant violated section 19572, subdivisions (m) and (t), but modifies the dismissal to a demotion.

DISCUSSION

Appellant was appointed to the position of Office Assistant (Typing) with SCIF beginning on January 22, 1991. On August 13, 1991 she was promoted to the position of WCIT, range A. As the lowest level WCIT, appellant was charged with the basic duties involved in claims adjusting. At the time of this incident, appellant was the only WCIT at the Monterey Park office and was charged with processing workers' compensation claims for employees who provided "in-home services." Appellant did not have any duties related to adjusting claims involving CHP officers.

On November 16, 1991, appellant was pulled over by two CHP officers, Officer Chris Costigan and Officer Sean Ricci, for suspicion of driving under the influence of alcohol. The officers administered field sobriety tests to appellant and determined that

(Corral continued - Page 3)

she was indeed driving under the influence of alcohol. The officers placed appellant under arrest and directed her into their patrol vehicle.

While appellant had been cordial to the two officers prior to the time of her arrest, she became hostile once she was placed under arrest. During the time between her arrest and her final stop at jail, appellant informed the arresting officers that she was a claims adjuster for SCIF and that she adjusted claims involving CHP officers out of East Los Angeles. Appellant told the officers about one claim involving a CHP officer who had been shot and then asked Officer Costigan if he had any claims with SCIF. When the officer replied that he did not, she stated "You're a young baby", and then told the officers that one day they would have a claim. The officers took this to mean that appellant might try to tamper with CHP claims in the future. Officer Ricci then asked appellant if she meant that she was planning to "mess" with CHP claims. Appellant replied, "You'll see, you'll see." Both officers took the appellant seriously and considered her statements to be real threats, despite her inebriated condition. At the time of the incident, appellant was still on probation as a WCIT.

Appellant was subsequently found to have a blood alcohol level of .24, three times the legal limit, and was charged with violation of Vehicle Code section 23152(a), driving under the influence of

(Corral continued - Page 4)

alcohol. She pled nolo contendere to criminal charges and had her license suspended for one year.

After the incident occurred, Officer Costigan reported the conversation to his supervisor, as well as to a SCIF representative who happened to be at CHP headquarters the next day. He also wrote a memorandum detailing the incident, which memorandum was sent to SCIF along with a cover letter from the Captain of the East Los Angeles CHP station. In his letter, the Captain expressed serious concern that the appellant might try to tamper with his officers' claims.

Appellant admits that she told the officers that she was a claims adjuster for the state, but states that she only told them that after they inquired about her occupation. She denies making any overt or implied threats to the officers concerning their claims, but admits that when asked if she was planning to mess with future CHP claims she said, "we'll see." She claims, however, that she did not intend her response to be a threat, and that she never had the intention or ability to interfere with CHP claims.

SCIF charged appellant with violations of Government Code Section 19990 [engaging in inconsistent or conflicting duties] and Section 19572, subdivisions (m) discourteous treatment of the public or other employees and (t) failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to his agency or his employment. Appellant was

(Corral continued - Page 5)

dismissed from her position as a WCIT effective December 1, 1991.

While the ALJ resolved the conflicts in testimony in favor of the officers, she nevertheless modified the dismissal to an official reprimand, the least severe form of adverse action. The ALJ justified the modification on the grounds that there was evidence that the appellant did not have the ability to adjust CHP claims and that the appellant was simply "mouthing off."

ISSUE

What is the appropriate penalty under the circumstances?

DISCUSSION

When performing its constitutional responsibility to "review disciplinary actions" [Cal. Const. Art. VII, section 3 (a)], the Board is charged with rendering a decision which, in its judgment is "just and proper." (Government Code section 19582). One aspect of rendering a "just and proper" decision involves assuring that the discipline imposed is "just and proper." In determining what is a "just and proper" penalty for a particular offense, under a given set of circumstances, the Board has broad discretion. The Board's discretion, however, is not unlimited. In the seminal case of Skelly v. State Personnel Board (Skelly) (1975) 15 Cal.3d 194, the California Supreme Court noted:

While the administrative body has a broad discretion in respect to the imposition of a penalty or discipline, it does not have absolute and unlimited power. It is bound to exercise legal discretion, which is, in the circumstances judicial discretion. (Citations) 15 Cal.3d 194, 217-218.

(Corral continued - Page 6)

In exercising its judicial discretion in such a way as to render a decision that is "just and proper", the Board considers a number of factors it deems relevant in assessing the propriety of the imposed discipline. Among the factors the Board considers are those specifically identified by the Court in Skelly as follows:

...[W]e note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in [h]arm to the public service. (Citations.) Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence. (Id.)

The appellant contends that an official reprimand is a proper penalty as her actions were not harmful to the public service. She argues that her comments were simply statements made in response to the officers' questions; they were not intended to be threats. She further contends that even if the officers perceived the statements made to be threats, SCIF knows that she did not have the ability to carry out such threats as she did not handle CHP claims and, as a probationary employee, her work was always reviewed. Finally, she argues that she was in an extremely intoxicated state when she made the comments, and that the officers knew or should have known not to take what she said seriously. In her opinion, SCIF is overreacting to the situation.

On the other hand, the Department argues that appellant's actions could, and did, result in serious harm to the public service. Two SCIF representatives testified that appellant indeed had the ability to tamper with CHP claims if she wished, despite

(Corral continued - Page 7)

her insistence otherwise, such as by destroying a file on another's desk or manipulating the computer. SCIF argues that they cannot take chances on the appellant's promise that her statements were not threats and simply hope that she was not serious when she made these threats to the officers.

Moreover, SCIF argues that even if she never possessed the actual ability to interfere with CHP claims, that fact is irrelevant. SCIF argues that harm to the public service already occurred when the CHP officers took her statements seriously. SCIF claims that the CHP account is a particularly sensitive one, and that the special relationship of trust and integrity which SCIF has fostered with the CHP over many years was damaged as a result of appellant's threats. SCIF believes that appellant's threats cast a dark cloud over their relationship with the CHP, and that the only way to rectify the situation is to have the appellant dismissed. SCIF further argues that dismissal is particularly warranted as appellant was not a long term employee with a successful record, but merely a probationary employee.

The Board finds that appellant did have the ability to tamper with CHP claims at the time these statements were made, despite the fact that she was not herself responsible for processing such claims. There was a great deal of testimony presented by SCIF supervisors as to what the appellant could potentially do, either to delay, lose or interfere with CHP claims, and that testimony was

(Corral continued - Page 8)

not contradicted or impeached by the appellant. Furthermore, we find that appellant made these statements as revenge, and that the statements were intended to be received by the officers as threats.

While the Board agrees with the conclusion in the Proposed Decision that appellant violated Section 19572, subdivisions (m) and (t), we do not believe that this single incident, under these circumstances, warrants appellant's dismissal from state service.¹

We believe appellant's statements were the result of hostility, fear, and her intoxicated condition, and that in all likelihood, she did not intend to carry out these threats. Furthermore, while the Board certainly does not condone drunk driving, it must be stressed that the charges are not based on the drunk driving; nexus is established and the charges stem only from appellant's statements to the officers. The public harm caused by these statements, given the appellant's condition, is not so grave as to merit the ultimate penalty of dismissal.

While the Board declines to sustain appellant's dismissal, neither do we agree with the ALJ's Proposed Decision that the proper penalty is an official reprimand. The CHP was justified in its concerns about potential claim interference, and more importantly, SCIF was justified in its concerns about damage to its relationship with the CHP. What the appellant did was serious.

¹ We also find, as did the ALJ, that appellant's actions do not constitute a violation of Government Code section 19990.

(Corral continued - Page 9)

She misused her official position as a WCIT to imply to the arresting officers that she had the power to hurt them financially.

Her statements were tantamount to blackmail, and warrant a penalty more severe than an official reprimand, even given appellant's inebriated condition.

The Board finds that the most appropriate penalty under the circumstances is a demotion to the position of Office Assistant. A demotion is a harsh penalty, one we believe will serve to communicate to appellant that the use of a position to make egregious threats will not be tolerated. At the same time, a demotion will permit appellant to remain in state service and give her one more chance to prove she is capable of a successful career.

Accordingly, the Board modifies the penalty of dismissal to a demotion to the position of Office Assistant.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to Government Code sections 19582 and 19584, it is hereby ORDERED that:

1. The above-referenced adverse action of dismissal taken against Christine M. Corral is hereby modified to a demotion to the position of Office Assistant.

2. The State Compensation Insurance Fund shall pay to Christine M. Corral all back pay and benefits that would have

(Corral continued - Page 10)

accrued to her had she been demoted to Office Assistant instead of dismissed.

3. This matter is hereby referred to the Administrative Law Judge and shall be set for hearing on written request of either party in the event the parties are unable to agree as to the salary and benefits due Ms. Corral.

4. This decision is certified for publication as a Precedential Decision. (Government Code section 19582.5).

STATE PERSONNEL BOARD*

Richard Carpenter, President
Alice Stoner, Vice President
Lorrie Ward, Member
Alfred R. Villalobos, Member

*Member Floss Bos did not participate in this decision.

* * * * *

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on January 6, 1994.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board